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Security Council

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Letter dated 18 April 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 16 December 2004 (S/2004/1002). The Counter-Terrorism Committee has received the attached fifth report from Belarus submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

05-31557 (E) 060505 090505

Letter dated 14 April 2005 from the Permanent Representative of Belarus to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to transmit to you the fifth report of the Republic of Belarus to the Counter-Terrorism Committee submitted in response to your letter of 10 December 2004 (see enclosure).

The Government of the Republic of Belarus stands ready to provide the Committee with additional reports or information that may be requested by the Committee.

I would be grateful if you would have the report circulated as a document of the Security Council.

(*Signed*) Andrei **Dapkiunas**
Ambassador

Enclosure

[Original: Russian]

Fifth report of the Republic of Belarus submitted to the Counter-Terrorism Committee, in accordance with paragraph 6 of Security Council resolution 1373 (2001)

1. Implementation measures

1.1 The International Convention for the Suppression of the Financing of Terrorism entered into force for Belarus on 5 November 2004. The Act ratifying the International Convention for the Suppression of the Financing of Terrorism was adopted on 5 July 2004.

Belarus has drawn up two draft laws aimed at achieving suitable implementation of the Convention and at adopting additional measures — within the framework of Security Council resolution 1373 (2001) — to prevent the financing of terrorism: (a) a draft law amending and supplementing certain legislative acts of the Republic of Belarus regarding issues connected with combating the financing of terrorist activity and (b) a draft law amending and supplementing the Act of the Republic of Belarus "on measures to prevent the legalization of funds obtained by illegal means".

The President has referred these draft legislative acts to the National Assembly (parliament) for consideration at its 2005 spring session.

Question on measures to *criminalize financial support of terrorism, except where such financial support is provided through complicity in related criminal activities; provide for prosecution of persons who provide financing of a group that is engaged in terrorist activities.*

Answer: The draft law on amending and supplementing certain legislative acts of the Republic of Belarus regarding issues connected with combating the financing of terrorist activity provides for amending and supplementing the Act of the Republic of Belarus of 3 January 2002 "on counter-terrorism" and the Criminal Code of the Republic of Belarus.

The Criminal Code will specify the liability of natural persons for financing terrorist activity, while the Act "on counter-terrorism" will lay down the liability of legal persons for financing terrorist activity.

Currently, the acts figuring in article 2 of the Convention are not distinct categories of offences under the criminal law of Belarus. Criminal liability for such acts is determined on the basis of article 16 of the Criminal Code of the Republic of Belarus (complicity in a crime). Consequently, the plan is to add to the Criminal Code a new article establishing natural persons' criminal liability for financing terrorist activity.

More specifically, the Criminal Code will define the financing of terrorist activity as "wilfully providing or collecting funds or other assets, by whatever means, for intended use in terrorist activity". The proposed penalty for persons or groups of persons perpetrating such crimes is imprisonment with confiscation of property.

The new article of the Criminal Code will contain a specific section dealing with the criminal liability of persons who use their official authority to finance terrorist activity. It will regulate matters of criminal liability in the case of natural persons responsible for the management or supervision of a legal person involved in financing terrorist activity.

Currently, the liability of legal persons for financing terrorist activity is provided for in part in article 23 of the Act of the Republic of Belarus "on counter-terrorism".

Article 23, which deals with organizations' liability for terrorist activity, establishes that an organization registered in the Republic of Belarus may be deemed a terrorist organization by a court decision, and therefore closed down in accordance with established legal procedures. When an organization deemed to be terrorist in nature is closed down, property belonging to it is confiscated.

According to article 3 of the Act, "terrorist activity" includes financing a known terrorist organization or group.

The draft law proposes to add to article 3 of the Act "on counter-terrorism" a definition of the "financing of terrorism" (wilfully providing or collecting funds or other assets, by whatever means, for intended use in terrorist activity).

A special article will also be added to the Act "on counter-terrorism" to cover liability of legal persons for the financing of terrorist activity.

The new article will reinforce the provision that a legal person shall be deemed, by a decision of the Supreme Court, to be terrorist in nature and closed down if an official responsible for its management or supervision finances terrorist activity. When a legal person involved in financing terrorist activity is closed down, property belonging to it is confiscated. The same procedure will apply to the subsidiaries (representative offices) in Belarus of a foreign or international organization registered outside Belarus.

Question on *allowing the freezing of funds linked to terrorist organizations; Authorize the freezing of funds "without delay", pursuant to paragraph 1(c) of the resolution.*

Answer: The draft law amending and supplementing the Act of the Republic of Belarus "on measures to prevent the legalization of funds obtained by illegal means" provides for the possibility of suspending financial transactions (except the crediting of funds received) if one of the participants in the transaction is involved in terrorist activity or is directed by persons involved in terrorist activity.

A suspended financial transaction may be resumed if the financial monitoring body informs the person conducting the transaction that there is insufficient evidence that one of the parties to the transaction is involved in terrorist activity or is directed by persons involved in terrorist activity.

The provisions in question will thus result in more effective freezing of accounts containing suspicious funds, including those connected with terrorist activity.

Question on *the requirement to report suspicious transactions by all financial institutions, as well as by insurance companies and other such intermediaries engaged in financial transactions.*

Answer: Belarus has taken action aimed at further improving national legislation, taking account of the requirements of article 18 (b)* of the International Convention for the Suppression of the Financing of Terrorism and the recommendations of the Financial Action Task Force (FATF).

The draft law includes provisions obliging persons performing a financial transaction to register any transaction subject to special oversight on a special form within the working day upon learning that special oversight applies. The special form must be forwarded to the financial monitoring body no later than the next working day following registration.

The draft law establishes under what circumstances a financial transaction is subject to special oversight (in other words, is considered a "suspicious financial transaction").

More specifically, a financial transaction, whether completed or not, is subject to special oversight if one or more of the following conditions is met:

The person performing the financial transaction suspects that its purpose is to legalize funds or finance terrorism, or if the transaction is suspicious by virtue of other characteristics figuring on a list established by the Council of Ministers of the Republic of Belarus;

There is information that the person performing the financial transaction is involved in terrorist activity or is directed by persons involved in terrorist activity. The financial monitoring body will supply a list of such persons.

The draft law will strengthen the requirement to declare large financial transactions which exceed a certain amount. Financial transactions will be subject to special oversight if they equal or exceed 2,000 basic units for natural persons or 20,000 basic units for organizations or individual entrepreneurs and correspond in character to one of the following:

a transaction involving cash;

a transaction involving a client account or deposit;

a transaction involving an international payment or a postal transfer;

a transaction involving securities;

a credit or loan transaction connected with an international transfer;

a transaction involving movable or immovable property;

a transaction involving the transfer of a debt or assignment of a claim.

Question on *regulating the activities of alternative money transfer systems.*

Answer: Illegal and covert money-transfer methods, such as *hawala*, are banned and are considered unlawful in Belarus. Its legislation categorizes illegal money-transfer methods as crimes in the form of unlawful entrepreneurial activity (article 223 of the Criminal Code); they are prosecuted in accordance with article 134 of the Banking Code (liability for performing banking transactions without a licence).

* *Translator's note*: The Convention has no article 18 (b) as such: article 18 has four numbered paragraphs, with paragraphs 1 to 3 each having a subparagraph (b).

For performing banking transactions without a licence issued by the National Bank, a legal person may be closed down, and the activities of an individual entrepreneur may be halted, by the decision of a court, in accordance with established legal procedures (second section of article 134 of the Banking Code).

The activities of non-bank credit and financial institutions are regulated by section IV of the Banking Code.

In accordance with article 9, non-bank credit and financial institutions are recognized as legal persons with the right to perform certain banking transactions and activities, with the following overall exceptions:

Eliciting financial resources from natural and/or legal persons for deposit;

Investing elicited financial resources in their own name and for their own account, in a reimbursable, chargeable and time-bound manner;

Opening and administering bank accounts for natural and legal persons.

The National Bank defines the permitted combination of banking transactions which non-bank credit and financial institutions may perform.

Question on *preventing the financing of terrorist activities through, or by charitable and other non-profit organizations.*

Answer: Registration of charitable and other non-profit organizations is carried out by the Ministry of Justice and its local authority sub-offices.

Checks on the legality of non-profit organizations' activities, for purposes including preventing the financing of terrorism, are performed by the sub-departments of the State Monitoring Committee, the Ministry of Taxes and Duties and other entities.

Belarus has an effective mechanism for detecting illegal financial activity by non-profit organizations, all of whose financial transactions are checked for taxation purposes. There is, furthermore, a transparent mechanism, used in cases where financial and other resources are solicited from foreign States to implement projects, which exercises sufficient supervision of non-profit organizations' activities.

The principal means of preventing the financing of terrorism by charitable organizations are described in the fourth report of the Republic of Belarus to the Counter-Terrorism Committee.

1.2 Presidential decree No. 408 of 14 September 2003 established a Department of Financial Monitoring within the State Monitoring Committee. Under the terms of the Belarus Constitution, the State Monitoring Committee is constituted by the President of Belarus to exercise State supervision of the implementation of the national budget, the use of State property, the implementation of acts of the President, parliament, Government and other State entities that manage State property and deal with economic, financial and taxation matters.

The Department of Financial Monitoring is authorized to take steps to prevent the legalization of income obtained by illegal means, using methods including the collection and processing of data on financial transactions subject to special oversight.

The Department of Financial Monitoring also collaborates with the competent bodies of foreign States. Such activity includes supplying them with appropriate information — at their request or at its own initiative — in accordance with the procedure and principles laid down in international agreements and other legislative acts of Belarus, provided that such information would not harm the interests of the State. Another responsibility of the Department is taking part, in accordance with established procedures, in the work of international organizations regarding the prevention of the legalization of the proceeds of crime.

Belarus intends to establish a special State entity responsible for detecting suspicious transactions and preventing the financing of terrorism.

The draft law "on measures to prevent the legalization of income obtained by illegal means and the financing of terrorism" provides for the establishment of a State financial monitoring body whose responsibilities will include:

Monitoring the activities of persons who carry out financial transactions and their fulfilment of legislative requirements to prevent the legalization of income and the financing of terrorism;

Taking steps to prevent the legalization of income and the financing of terrorism, establishing and operating an automated system for accounting for, processing and analysing information on financial transactions subject to special oversight;

Issuing decrees on the suspension of financial transactions;

Transmitting relevant information and materials to the criminal prosecution agency where there are sufficient grounds to show that a financial transaction is related to the legalization of income or the financing of terrorism;

Developing and carrying out measures so that laws on prevention of the legalization of income and the financing of terrorism are not breached, generalizing the application of domestic legislation in this field, monitoring the procedure for carrying out financial transactions and other operations, and developing proposals to improve monitoring;

Involvement in the preparation of draft normative legal acts and in the conclusion and execution of international agreements on prevention of the legalization of income and the financing of terrorism;

Applying liability measures to persons who have breached laws on preventing the legalization of income and the financing of terrorism, in accordance with legislation;

As regards the competencies of other Government agencies of the Republic of Belarus dealing with prevention of the financing of terrorism, we refer to the provisions of a draft law amending and supplementing the Act of the Republic of Belarus "on measures to prevent the legalization of income obtained by illegal means" and provisions on the financing of terrorism. These provisions reflect the existing distribution of competencies among Government agencies concerned with financial monitoring and prevention of the financing of terrorism.

The draft law strengthens the following competencies of Government agencies dealing with prevention of the financing of terrorism:

The National Bank of the Republic of Belarus monitors banks and non-bank credit and financial institutions;

The Securities Committee, under the Council of Ministers of the Republic of Belarus and its inspectorates, monitor professional participants in the securities market, persons engaged in exchange activities and lottery organizers;

The Ministry of Communication and Informatics monitors postal communication operators;

The Ministry of Justice monitors notaries, agencies providing legal services, lawyers and other independent legal specialists — if they are making a financial transaction on behalf of or at the request of their client in connection with the following types of activities: the purchase and sale of real estate; management of the client's money, securities or other assets; management of bank and savings accounts or securities accounts; the creation and supply of work or the management of legal persons or entities, and the acquisition and sale of enterprises as property;

The Ministry of Sports and Tourism monitors casinos, betting offices, organizers of totalizators, computer (electronic) games and other gaming institutions (possessing slot machines, or other gaming equipment or devices);

The Ministry of Finance monitors persons trading in precious metals and precious stones, insurance and reinsurance companies, mutual assurance associations and insurance brokers;

In the absence of a Government agency monitoring activities to prevent the legalization of income and the financing of terrorism by persons carrying out financial transactions, such monitoring is carried out by the financial monitoring body.

1.3. Belarus adheres to the principle of *au dedere aut judicare* (extradite or prosecute), provided for in the obligations that it has assumed under international legal documents, including on the basis of a number of conventions and protocols related to combating terrorism.

Belarus holds that terrorism cannot be justified by political or any other motivations. The extradition or prosecution of a person accused of committing a terrorist act is decided within the framework of international agreements or on the basis of the principle of reciprocity, in accordance with the criminal legislation of the Republic of Belarus.

On 18 May 2004, the Republic of Belarus Act' "on international legal assistance in criminal matters" was adopted. Pursuant to this Act, a draft law was prepared "on amending and supplementing the Code of Criminal Procedure of the Republic of Belarus concerning the provision of international legal assistance in criminal matters".

In accordance with the draft law, section XV of the Code of Criminal Procedure of the Republic of Belarus will be issued in a new edition. This section will be called "International legal assistance in criminal matters" and will define the following:

Authorities in the Republic of Belarus competent to adopt decisions on the provision of international legal assistance in criminal matters (article 469);

Information to be contained in a request by the competent authority of a foreign State for the provision of assistance (article 470);

General grounds for refusal to provide assistance (article 471);

Procedure for executing a request by the competent authority of a foreign State for the provision of assistance (article 472), and the content and form of such a request (article 473);

Procedure for submitting procedural and other documents (articles 474 and 475);

Summoning of the victim, witness, civil plaintiff, civil respondent, their representatives and experts (article 476);

Information enclosed in the request by the competent authority of a foreign State on the transmission to it of substantive evidence (article 477);

Procedure for transmitting substantive evidence to the competent authority of the Republic of Belarus (articles 478 and 479);

Legal force of evidence obtained on the territory of a foreign State (article 480);

Procedure for transit transport through the territory of the Republic of Belarus (articles 481, 482, 483 and 484);

Procedure for the temporary transfer of persons kept in custody or serving a sentence in the form of imprisonment, for the purposes of carrying out procedural actions with their participation (article 486);

Establishment of the whereabouts of persons (articles 486, 487, 488 and 489);

Extradition and the circumstances that are the grounds for extraditing a person to a foreign State for the institution of criminal proceedings against him and/or for him to serve a sentence in the form of imprisonment (articles 490 and 491);

Procedure for submitting a request for the extradition of a person situated in the territory of the Republic of Belarus and the list of documents enclosed in such a request (article 492);

Grounds for refusing to extradite a person (article 493);

Ensuring the extradition of a person to a foreign State (article 494);

Postponement of the extradition of a person (article 495);

Temporary extradition of a person (article 496);

Conflicts arising from the execution of a request to extradite a person (article 497);

Procedure for the competent authority of the Republic of Belarus to draw up a request for the extradition of a person situated in the territory of a foreign State (article 498);

Ensuring the extradition of a person to the Republic of Belarus (article 499);

Assurances to a person extradited to the Republic of Belarus (article 500);

Temporary extradition of a person and ensuring his return (articles 501 and 502);

A decision on extradition or temporary extradition taken at the request of the competent authority of a foreign State (article 503);

An appeal against a decision on the extradition or temporary extradition of a person, and verification of its legality (article 504);

International legal assistance in the criminal prosecution of persons suspected or accused of committing offences (chapter 54, articles 505-515);

The execution of court decisions on criminal matters that have entered into legal force (chapter 55, articles 516-527);

Ensuring the execution of requests for the provision of separate forms of international legal assistance in criminal matters (chapter 56, articles 528-537).

Article 493 of the draft law contains a list of the grounds for refusal to extradite a person. The extradition of a person shall not be permitted if:

(1) The person whose extradition is requested is a citizen of the Republic of Belarus;

(2) The person whose extradition is requested was granted asylum in the Republic of Belarus;

(3) The purpose of the request for extradition is the criminal prosecution or punishment of the person whose extradition is requested on the grounds of race, sex, religion, nationality or political convictions;

(4) The act that is the grounds for the extradition request is not an offence in accordance with the Criminal Code of the Republic of Belarus;

(5) The offence for which extradition is requested is a military offence;

(6) The punishment for committing the act that is the grounds for the extradition request, in accordance with the Criminal Code of the Republic of Belarus or the criminal legislation of the foreign State, is provided for in the form of imprisonment for a period of less than one year;

(7) The person whose extradition is requested was sentenced to punishment in the form of imprisonment for a period of less than six months;

(8) There is a court decision by the Republic of Belarus that has entered into legal force recognizing a decree of the Prosecutor-General of the Republic of Belarus or his deputies whereby the extradition of the person is deemed to be illegal;

(9) There is an irrevocable decision of the criminal prosecution agency of the Republic of Belarus on the refusal to initiate criminal proceedings against the person referred to in the request or on the cessation of criminal proceedings, or a court sentence or decision (ruling) of the Republic of Belarus that has entered into legal force on the cessation of criminal proceedings in connection with the same act;

(10) A criminal case cannot be initiated or a sentence cannot be carried out because of a lapse of time or for another lawful reason, in accordance with the legislation of the Republic of Belarus;

(11) The offence for which extradition is requested is punishable by the death penalty under the law of the foreign State, whereas the death penalty is not imposed for such an offence under the Criminal Code of the Republic of Belarus, and if the foreign State has not provided assurances that the death sentence will not be passed, or, if it is passed, that it will not be carried out;

(12) An act is adopted in the Republic of Belarus granting a pardon to the person whose extradition is requested or amnesty to the person who committed the offence for which extradition is requested;

(13) The person has fully served a sentence and been subject to other measures of criminal liability, or is exempt from serving a sentence;

(14) There are general grounds for a refusal to provide international legal assistance in criminal matters provided for in article 471 of the proposed draft law, section XV of the Code of Criminal Procedure of the Republic of Belarus.

The second part of article 493 stipulates that the extradition of a person may be refused if:

(1) The act for which the extradition was requested was committed in the territory of the Republic of Belarus or against the interests of the Republic of Belarus;

(2) A criminal prosecution for the same act is being carried out in the Republic of Belarus against the person whose extradition is requested, or the person is serving a sentence;

(3) There is a request for the extradition of the same person from several States and the person was extradited, or will be extradited, to another State;

(4) A criminal prosecution of the person whose extradition is requested has been initiated under a private indictment;

(5) The competent authority of the foreign State has not undertaken an obligation on behalf of the State to provide similar legal assistance under conditions of reciprocity or the assurances provided for in part 2, article 491, in the proposed draft of section XV of the Criminal Code of Procedures of the Republic of Belarus.

Article 491 defines the circumstances that are the grounds for the extradition of a person to a foreign State and the adoption of a decision to extradite, and contains instructions that the extradition of a person to a foreign State in order to institute criminal proceedings against him and/or for him to serve a sentence in the form of imprisonment is subject to the following conditions:

(1) The act for which a request is made to extradite a person in order to institute criminal proceedings against him is criminally punishable in accordance with the Criminal Code of the Republic of Belarus and the legislation of the foreign State, and for the commission of which provision is made for punishment in the form of imprisonment for a period of not less than one year or a more severe penalty;

(2) The act for which a request is made to extradite a person in order to serve a sentence, in accordance with the Criminal Code of the Republic of Belarus and the legislation of the foreign State, is criminally punishable, and for its commission the

person whose extradition is requested is sentenced to imprisonment for a period of not less than six months or a more severe penalty.

The second part of this article establishes that the extradition of a person can be carried out only if the competent authority of the foreign requesting State provides assurances that, without the agreement of the competent authority of the Republic of Belarus, the person whose extradition is requested will not be subject to criminal prosecution or sentenced or detained for the purpose of serving a sentence for any offence committed prior to his extradition, except in respect of the offence for which he was extradited, and will not be extradited to a third State.

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Letter dated 18 April 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 23 February 2005 (S/2005/116). The Counter-Terrorism Committee has received the attached fifth report from Guatemala submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Letter dated 15 April 2005 from the Permanent Representative of Guatemala to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I am writing in response to the letter from your predecessor, Mr. Andrey I. Denisov, dated 19 January 2005 concerning the questions and comments made on the supplementary report submitted by the Government of Guatemala in accordance with paragraph 6 of Security Council resolution 1373 (2001). In this regard, I am pleased to transmit to your Committee the fifth report on measures taken by the Government of Guatemala in order to fulfil the commitments made in the aforementioned resolution (see enclosure).

(*Signed*) Jorge **Skinner-Klée**
Ambassador
Permanent Representative

Enclosure

[Original: Spanish]

Fifth report of Guatemala pursuant to Security Council resolution 1373 (2001)

1. Implementation measures

Effective protection of the financial system

1.1 The CTC would be grateful to receive a progress report on the following:

- **The passage and enactment of the draft Act for the prevention and suppression of the financing of terrorism which was introduced in the Plenary of the Congress in April 2003**

Reply of the Government of Guatemala

The draft Act for the prevention and suppression of the financing of terrorism — Legislative Proposal No. 2839 from the Legislative Directorate — has not yet been approved by the Congress of the Republic. It was, however, the subject of a favourable opinion (No. 11-2004 of 8 October 2004) from the Public Finance and Currency Committee and has been submitted to the Plenary of the Congress of the Republic for discussion and approval.

- **The passage and enactment of the draft Anti-Terrorism Act, which is still being processed by the Ministry of Foreign Affairs and has yet to be submitted to the legislature**

Reply of the Government of Guatemala

The draft Anti-Terrorism Act drawn up by the Multi-Disciplinary Committee, which is coordinated by the Ministry of Foreign Affairs, is still being discussed within the Ministry, before being submitted to the legislature.

- **Guatemala becoming a party to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf**

Reply of the Government of Guatemala

As part of their ratification process, the General Secretariat of the Office of the President has submitted the Convention and the Protocol to the Congress of the Republic for adoption.

1.2 Subparagraph 1 (c) of the resolution requires States to freeze without delay the funds or other economic resources of persons or entities who commit, attempt to commit, participate in or facilitate the commission of terrorist acts. In its second report, Guatemala indicated that the freezing of funds is done by a judge at the request of the Office of the Public Prosecutor. A judge or court, however, must confirm such an order, immediately. The CTC would appreciate receiving an indication of whether Guatemalan authorities are empowered to freeze assets of persons and entities involved in terrorist acts at the request of another State.

Reply of the Government of Guatemala

Article 11 of the Act against the Laundering of Money or Other Assets, Decree No. 67-2001, provides as follows: "Precautionary measures. The trial judge or court may order at any time, without prior notice or hearing, any precautionary or security measure established by law to ensure the continued availability of the property, product or instruments proceeding from or related to the offence of laundering money or other assets, when the Office of the Public Prosecutor so requests. Such request shall be considered and decided upon by the judge or court immediately." Any request must therefore be made through the Office of the Public Prosecutor.

Effectiveness of customs, border and immigration controls

1.3 Effective implementation of subparagraphs 2 (c) and 2 (g) of the resolution requires the operation of efficient customs and border controls to prevent and suppress the financing of terrorist acts as well as the movement of terrorists. In this regard, does Guatemala impose restrictions or controls on the cross-border movement of cash, negotiable instruments, precious stones and metals?

Reply of the Government of Guatemala

Controls on the movement of cash and negotiable instruments are regulated by the Act against the Laundering of Money or Other Assets, Decree No. 67-2001, as follows:

> "Article 25. Declaration. Any natural or legal person of Guatemalan or foreign nationality who, acting alone or through an intermediary, moves cash or negotiable instruments in excess of ten thousand United States dollars, or their equivalent in national currency, out of or into the Republic shall report such movement at the point of departure from, or entry into, the country using the forms which the Special Audit Office has designed for that purpose.
>
> "The competent authority shall verify the information provided on the sworn declaration contained on the form referred to in the previous paragraph. If there is an omission or false information on the declaration, the money or instruments concerned shall be confiscated or handed over to the authorities for a criminal investigation."

Precious stones and metals are subject to the same customs procedures as all goods in accordance with the customs clearance procedures established in the Central American Uniform Customs Code (CAUCA) and its regulation (RECAUCA).

1.4 Effective implementation of subparagraphs 2 (c) and 2 (g) of the resolution also requires the operation of efficient customs, immigration and border controls to prevent the movement of terrorists and the establishment of safe havens. In this regard, please outline the legal and administrative procedures developed by Guatemala to protect port facilities, aircraft, cargo transport units and ships' stores from the risks of terrorist attacks.

Reply of the Government of Guatemala

1. In accordance with the guidelines (State commitments) of the Conference of States parties to the International Convention for the Safety of Life at Sea (SOLAS) and the general provision of the International Code for the Security of Ships and of Port Facilities (ISPS Code), the Government of the Republic of Guatemala requires the port facilities within its territory to implement security plans, adopt entry control measures, build security infrastructures and install equipment to ensure the safety of persons, goods and external trade operations by:

(a) Carrying out a security assessment;

(b) Designating a Port Facility Security Officer (PFSO);

(c) Drawing up a security plan;

(d) Building infrastructure and installing security equipment;

(e) Approving the security plan;

(f) Implementing the security plan (training, drills and exercises).

To that end, the National Port Commission, as the designated authority for implementing the ISPS Code, set up a working group with the following national institutions that specialize in various aspects of security:

- The Office of the Inter-Agency Security Coordinator;
- The Maritime Department of the Ministry of National Defence;
- The Anti-Bomb Unit of the National Defence General Staff;
- The Operations Service of the National Civil Police;
- The Bomb Disposal Service of the National Civil Police;
- The Head of Security in each port;
- The Harbour Master's Office;
- The Anti-Drug Unit (SAIA);
- The Technical Advisory Office of the Port Security Programme (PSP).

As part of the ISPS Code implementation process, the following steps have been taken:

A. In line with regulation XI-2/13 of the SOLAS Convention, the Ministry of Foreign Affairs notified the International Maritime Organization (IMO) that Guatemala's three main ports — Santo Tomás de Castilla and Puerto Barrios on the Caribbean coast and Puerto Quetzal on the Pacific coast — had been issued with a Statement of Compliance and that a Port Facility Security Officer (PFSO) had been designated in each port. IMO

was also notified about Puerto Quetzal's three solid bulk warehouses and one liquefied gas warehouse, all of which are operated by private companies at Puerto Quetzal's docks, and about the four liquid bulk warehouses (three for hydrocarbons and one for molasses) at Puerto de San José, which has a system of buoys owing to operations within the ship/port interface.

B. Guatemala also authorized 33 companies providing port services to operate where a statement of compliance has already been issued: 14 in Puerto Quetzal and 19 in Santo Tomás de Castilla and Puerto Barrios, where there is no ship/port interface.

As part of the security plans, consideration was also given to building perimeter walls and/or fences around those port facility buildings and specialized warehouses without one and to contingency plans, evacuation procedures and training in aspects of security and protection, in line with the Maritime Transportation Security Act of the United States of America.

On 1 October 2004, the official notification process concerning port facilities was completed when the Ministry of Foreign Affairs submitted its official communication to IMO, thereby ensuring that Guatemalan ports and port facilities comply with international protection and security requirements and making it possible to require ships that enter its jurisdictional and sovereign waters, dock at its ports or use its warehouses to comply with the same regulations.

2. As for border controls, it should be pointed out that, in line with the Superintendency Tax Administration (SAT) Organization Act contained in Decree No. 1-98 of the Congress of the Republic, the Tax Administration is responsible for administering Guatemala's customs system in line with the Central American Uniform Customs Code (CAUCA) and its regulation (RECAUCA).

The Tax Administration has worked with representatives of port enterprises on the issue of certification of ports. Such certification was received on 21 June 2004. At the request of port enterprises, the following points were dealt with:

- Construction of a perimeter fence at the Santo Tomás de Castilla customs building;
- Development of standards and procedures relating to rules for access to and exit from buildings occupied by the Tax Administration;
- Development of contingency and evacuation plans and procedures;
- Development of health and safety rules and installation of the necessary equipment (extinguishers, signalling of evacuation routes, smoke detectors, and masks for staff who may come into contact with dangerous goods);
- Training in aspects of industrial safety and first aid for maritime customs personnel.

The Tax Administration also takes part in the evaluation and follow-up of measures implemented in areas under its authority.

Controls to prevent the supply of weapons to terrorists

1.5 **Effective implementation of subparagraph 2 (a) of the resolution requires States, inter alia, to eliminate the supply of weapons to terrorists. Guatemala stated in its third report that the draft amendments to Decree-Law 39-89 on arms control are still being processed by the legislature, and that moves are under way to improve the control provisions of the amendments. The CTC would be grateful to have an outline of the draft amendments to Decree 39-89 and a progress report on its enactment.**

Reply of the Government of Guatemala

The amendments to Decree-Law 39-89, the Arms and Ammunition Act, are aimed at improving controls relating to illicit trafficking in and illegal possession of firearms ammunition, illegal bearing of explosives, chemical, biological and nuclear weapons and experimental weapons, and the stockpiling of and illegal trade in firearms and ammunition.

The aforementioned draft amendments to Decree-Law 39-89 are currently being considered by the Government Commission of the Congress of the Republic before being discussed by the legislature in plenary session.

2. Assistance and guidance

The Government of Guatemala acknowledges current international efforts to combat international terrorism and reaffirms its political will to comply with the provisions of the resolution. It therefore reiterates its request for assistance from the CTC in the following areas:

- Counter-terrorism legislation
- Financial law and practice
- Immigration law and practice
- Extradition law and practice
- Customs law and practice
- Police work and maintenance of law and order
- Arms trafficking controls

United Nations S/2005/259

Security Council

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Letter dated 18 April 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 21 November 2003 (S/2003/1124). The Counter-Terrorism Committee has received the attached third report from Brunei Darussalam submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

05-32116 (E) 250505

Annex

Note verbale dated 18 March 2005 from the Permanent Mission of Brunei Darussalam to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of Brunei Darussalam presents its compliments to the Chairman of the Committee and has the honour to transmit herewith the third report of Brunei Darussalam in accordance with paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

Enclosure

Brunei Darussalam's third report to the Counter-Terrorism Committee

In regard to the implementation of the requirements of sub-paragraph 1 (a) of the Resolution 1373 "Prevent and suppress the financing of terrorist acts", please outline the domestic legislation adopted by Brunei Darussalam to implement the requirements of the International Convention for the Suppression of the Financing of Terrorism, in particular Articles 2,5,8 and 18.

1. The offences laid down under Articles 2 and 5 of the Convention are found in sections 3, 4 and 5 of the Anti-Terrorism (Financial and Other Measures) Order 2002.

2. Section 3 of the Anti-Terrorism (Financial and other Measures) Order prohibits any person in the territory of Brunei Darussalam, any national of Brunei Darussalam or any company incorporated or registered in Brunei Darussalam to provide funds to or collect funds for any person outside the territory of Brunei Darussalam by any means, directly or indirectly, where he knows or has reasonable grounds to suspect that the funds will be used to commit any terrorist act or facilitate the commission of any terrorist act.

3. Section 4 of the Anti-Terrorism (Financial and other Measures) Order prohibits any person in the territory of Brunei Darussalam, any national of Brunei Darussalam or any company incorporated or registered in Brunei Darussalam to do any of the following outside the territory of Brunei Darussalam:-

   a. deal, directly or indirectly, in any property that is owned or controlled by or on behalf of any terrorist or any other person owned or controlled by any terrorist, including funds derived or generated from property owned or controlled, directly or indirectly, by any terrorist or any other person owned or controlled by any terrorist;

   b. enter into or facilitate, directly or indirectly, any financial transaction relating to a dealing in property referred to in paragraph a, above; or

   c. provide any financial services or any other related services in respect of any property referred to in paragraph a, above to or for the benefit of, or on the direction or order of, any terrorist or any other person owned or controlled by any terrorist.

4. Section 5 of the Anti-Terrorism (Financial and other Measures) Order prohibits any person in the territory of Brunei Darussalam, any national of Brunei Darussalam or any company incorporated or registered in Brunei Darussalam to make available any funds, financial assets, or economic resources or provide any financial or related services for the benefit of any terrorist, any person owned or controlled by any terrorist, or any person acting on behalf of or at the direction of any terrorist or any person owned or controlled by any terrorist outside the territory of Brunei Darussalam.

5. Any person in the territory of Brunei Darussalam and any national of Brunei Darussalam who contravenes sections 3, 4, and 5 of the Order is guilty of an offence and liable on conviction to a fine not exceeding B$100,000, imprisonment for a term not exceeding five years or both.

6. Every person who commits or does any act with the intent to commit, or who counsels, procures, aids, abets or incites any other person to commit, or conspires with any other person (whether in Brunei Darussalam or elsewhere) to commit an offence under sections 3, 4 and 5 of the Order is guilty of an offence and liable on conviction to a fine not exceeding B$100,000, imprisonment for a term not exceeding five years or both.

7. Where an offence under sections 3, 4, and 5 have been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of that body corporate or any person who was purporting to act in that capacity or any other person who holds a controlling interest in that body corporate, such a person as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly.

8. With regard to the obligations under Article 8 of the Convention, section 12 of the Anti-Terrorism (Financial and Other Measures) Order 2002 directs that all financial institutions in Brunei Darussalam must freeze assets belonging to suspected individuals/organizations based on the Security Council Decision. All financial institutions are then required to report to the Minister of Finance whether there were any assets found belonging to individuals or entities as sanctioned by the Security Council within a specified period of time. A financial institution that fails to comply with the financial directive issued under section 12 of the Anti-Terrorism (Financial and Other Measures) Order 2002 is guilty of an offence and liable to a fine not exceeding $20,000.

9. Brunei Darussalam, as a member of the Asia Pacific Group on Anti-Money Laundering (APG), also observes and implements the Financial Action Task Force (FATF) 40 recommendations and 9 special recommendations.

Please outline the relevant provisions in Brunei Darussalam's laws, which oblige financial institutions to report suspicious financial transactions.

10. The duty to provide information concerning suspicious financial transaction and property is laid out in Section 8 of the Anti-Terrorism (Financial and Other Measures) Order 2002.

11. Sections 14 and 16 of the Money Laundering Order 2000 provides for internal reporting procedures for identifying and providing evidence of persons involved in money laundering.

Please explain whether Brunei Darussalam's laws extend the same reporting obligations, including penalties for non-reporting, to other non-financial institutions or entities (e.g., lawyers, notaries).

12. Currently the reporting obligation under the Money Laundering Order 2000 and the Anti Terrorism (Financial and Other Measures) Order 2002 is limited to relevant financial business as defined by the Money Laundering Order 2000 and do not extend the same reporting obligations to professionals such as lawyers and notaries.

13. The Schedule to the Money Laundering Order is going to be reviewed to widen the definition of financial businesses in order to comply with the FATF 40 recommendations and 9 special recommendations.

Please provide the penalties prescribed for violating reporting obligations. Is there a specific Financial Intelligence Unit or other supervisory body assigned to deal with reporting obligations?

14. Failure to provide information is an offence under section 8 of the Anti-Terrorism (Financial and Other Measures) 2002, which is liable to a fine not exceeding $100,000, imprisonment for a term not exceeding five years or both, as stated in section 13 of the Order.

15. The Financial Institution Division (FID) and Brunei International Financial Centre (BIFC) within the Ministry of Finance are the supervisory bodies dealing with reporting obligations.

Please outline the Section 42 of the Internal Security Act 1984:

- **Whether the term "any terrorist" includes foreign terrorists?**
- **Whether the term "security area" refers to territories outside Brunei Darussalam? If not, please indicate the steps which Brunei Darussalam intends taking in order to comply fully with the requirements of sub paragraph 1 (b) of the Resolution 1373**

"Criminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts"?

16. The term "terrorist" provided under the Internal Security Act 1984 does include foreign terrorists.

17. "Security area" under the Internal Security Act only refers to areas within the territory of Brunei Darussalam.

18. However, the Anti-Terrorism (Financial and Other Measures) 2002 provides that any person in Brunei Darussalam is prohibited from collecting funds for the commission of terrorist act(s) whether in Brunei Darussalam or elsewhere (and fully complies with the requirements of sub-paragraph 1(b) of the Resolution 1373).

Please provide particulars of how Brunei Darussalam currently meets, or proposes to meet, this current law or in proposed legislation which would enable the authorities of Brunei Darussalam to freeze funds, financial assets etc., at the request of another State.

19. The Criminal Conduct (Recovery of Proceeds) Order 2000 makes provisions for the enforcement of confiscation, restraint and charging orders made by the court and for facilitating the enforcement of foreign confiscation, forfeiture and restraint orders. Before the authorities of Brunei Darussalam are able to freeze funds, financial assets etc., at the request of another State, that State needs to be designated in the Schedule to the Order. Such designation will take place upon agreement between Brunei Darussalam and the other State. Currently, there is no designation of States under the Order.

20. Brunei Darussalam can consider requests for freezing of funds and financial assets by States Parties to the International Convention for the Suppression of the Financing of Terrorism. Requests can also be made through INTERPOL which will be facilitated by the Royal Brunei Police Force in accordance with section 11 of the Anti-Terrorism (Financial and Other Measures) Order 2002.

Please outline the legal provisions in force in Brunei Darussalam which regulate alternative money transfer agencies or services for effective implementation of paragraph 1 of the Resolution 1373, as follows:

- **Sub-paragraph 1 (a) of the Resolution 1373 "Prevent and suppress the financing of terrorist acts".**

- **Sub-paragraph 1 (b) of the Resolution 1373 "Criminalize the willful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts"?**

- **Sub-paragraph 1 (c) of the Resolution 1373 "Freeze without delay funds and other financial assets or economics resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities"**

- **Sub-paragraph 1 (d) of the Resolution 1373 "Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.**

21. Currently, apart from banks, which are licensed under the Banking Act, (CAP 95) and the Islamic Banking Act (CAP 168), there are 34 remittance and 33 money – changing operators, which are licensed under the Money Remittance and Money Changing Order, 1994.

22. Under section 6(1) of the Money Remittance and Money Changing Order, 1994 "No person shall carry on any remittance business unless he is in possession of a valid remittance license."

23. Under section 6(2) of the Order, "A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding one year or to both."

24. Brunei regulates its alternative remittance system through the above Order and any other operators which fall outside this Order is considered illegal and can be liable to a fine or imprisonment mentioned above.

In the absence of such provisions for the effective implementation of paragraph 1 of the Resolution 1373 (as above), please indicate the steps in which Brunei Darussalam intends taking in order to incorporate this aspect of Resolution, into Brunei Darussalam's domestic law.

25. Not applicable as Money Remittance and Money Changing Order, 1994 regulates the alternative remittance system in Brunei Darussalam.

Brunei Darussalam indicates, in Section 6 of the Immigration Act 1958 applies, unless an exemption is consistent with the requirements of the sub-paragraphs? Please indicate whether Section 8 of the Immigration Act 1958 treats a person suspected of terrorist activity as "a prohibited immigrant person".

26. Under section 8(k) of the Immigration Act, "a prohibited immigrant person" includes a person suspected of terrorist activity based on information received by the Controller of Immigration from a reliable source or from another State through official or diplomatic channels.

The effective implementation of sub-paragraph 2 (d) of the Resolution 1373 "Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens". Brunei Darussalam (in the supplementary report) indicates that there are no specific provisions in the current law of Brunei Darussalam dealing with this aspect of the Resolution. Please indicate on how Brunei Darussalam will remedy this matter.

27. Financing of terrorism is covered by the Anti-Terrorism (Financial and other Measures) Order 2002 and section 42 of the Internal Security Act 2002.

28. Since Brunei Darussalam does not have specific laws dealing with planning, facilitating or committing terrorist acts, it will introduce a number of specific terrorist offences under its laws. For the time being Brunei Darussalam uses its preventive laws under the Internal Security Act 1984 to deal with this matter.

29. Brunei Darussalam will also enact the Mutual Assistance in Criminal Matters Order to facilitate international assistance in criminal matters, including:

(a) the obtaining of evidence, documents, articles or other things;
(b) the making of arrangements for persons, including detained persons to give evidence or assist investigations;
(c) the confiscation of property in respect of offences;

(d) the service of documents;
(e) the identification and location of persons;
(f) the execution of requests for search and seizure;
(g) providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records. Government records may be provided in accordance with whether or not they are in the public domain within the laws of Brunei Darussalam; and
(h) any other type of assistance that is not contrary to the laws of Brunei Darussalam.

30. When the Mutual Assistance in Criminal Matters Order comes into force, it will complement the Criminal Conduct (Recovery of Proceeds) Order 2000 and the Anti-Terrorism (Financial and other Measures) Order 2002. In this regard, paragraph 2(d) of Security Council Resolution 1373 will be effectively implemented.

Effective implementation of sub-paragraphs 2 (d) and (e) of the Resolution 1373: 2 (d) "Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens" and 2 (e) "Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorists acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts" requires each State to make it a criminal offence for anyone to use its territory for purpose of committing a terrorist act against another State or its citizens or for the purpose of financing, planning and facilitating the commission of terrorists act has been committed or attempted. Are the relevant provisions of the Criminal Law of Brunei Darussalam applicable in all of the following circumstances:

- **Acts committed outside Brunei Darussalam by a person who habitually resides in, Brunei Darussalam (whether that person is currently present in Brunei Darussalam or not);**

- **Acts committed outside Brunei Darussalam by a foreign national who is currently in Brunei Darussalam?**

31. Brunei courts do not have jurisdiction over criminal acts committed outside the territory of Brunei Darussalam by a person who is habitually resident in the territory of Brunei Darussalam. Brunei courts have jurisdiction over criminal acts committed outside the territory of Brunei Darussalam by its

nationals only as provided under section 7(f) of the Criminal Procedure Code.

32. Brunei courts do not have jurisdiction over a foreign national who commits a criminal act outside the territory of Brunei Darussalam but is currently in Brunei territory. In the event that the acts committed outside the territory of Brunei Darussalam by a foreign nations who is currently in Brunei territory is extraditable under the Extradition Act, Brunei Darussalam shall extradite that foreign national provided that the requesting country is listed under the Act.

33. Brunei Darussalam is revising the Extradition Act and planning to introduce a comprehensive Anti-Terrorism legislation in order to better implement the obligations under the Security Council resolution 1373.

Brunei Darussalam states that "terrorist acts" are defined in section 2 of the Anti-Terrorism (Financial and Other Measures) Order 2002. Please outline this provision, as well as the other provisions in the laws of Brunei Darussalam as regards crimes which qualify as terrorist activities.

34. Section 2 of the Anti-Terrorism (Financial and Other Measures) Order 2002 defines "terrorist act" means the use or threat of action (whether in Brunei Darussalam or elsewhere) -

(a) where the action -

(i) involves serious violence against any person;
(ii) involves serious damage to property;
(iii) endangers any person's life;
(iv) creates a serious risk to the health or safety of the public or a section of the public;
(v) involves the use of firearms or explosives;
(vi) involves releasing into the environment or any part thereof, or distributing or otherwise exposing the public or any part thereof to –

(A) any dangerous, hazardous, radioactive or harmful substance;
(B) any toxic chemical; or
(C) any microbial or other biological agent or toxin;

(vii) is designed to disrupt any public computer system or the provision of services directly related to communications infrastructure, banking, any financial services, public utilities, public transportation or public key infrastructure;

(viii) is designed to disrupt the provision of essential emergency services; or

(ix) involves prejudice to public security or national defence;

(b) where the use or threat is intended or reasonably regarded as intending to

(i) influence the Government or any other government; or

(ii) intimidate the public or a section of the public."

35. Under section 6 of the Anti-Terrorism (Financial and Other Measures) Order 2002, it is an offence to make false threats of terrorists' acts. Section 6 states that no person shall in Brunei Darussalam, and no citizen of Brunei Darussalam and no company incorporated or registered under the Companies Act (Chapter 39) shall outside Brunei Darussalam, communicate or make available by any means any information which he knows or believe to be false to any person with the intention of inducing in him or in any other person a false belief that a terrorist act has been, is being or will be carried out.

36. Section 42 of the Internal Security Act 2002 provides that any person who whether within or outside a security area demands, collects or receives any supplies from any other person in circumstances which raise a reasonable presumption that he intends, or is about, to act, or has recently acted, in a manner prejudicial to public security or the maintenance of public order, or that the supplies so demanded, collected or received are intended for the use of any person who intends or is about, so to act, or has recently so acted, or for the use of any terrorist, shall be guilty of an offence. The penalty for such an offence is imprisonment for life.

Brunei Darussalam states that under Section 5 of the Extradition Act 1984(?), one of the restrictions in relation to the surrender of criminal offenders is that such offender will not be surrendered if the offence for which he is sought is an offence "of a political character". Brunei Darussalam also states that the Act in question "is presently under review with the intention to ensure that it is updated in accordance with current international practice". Please outline the progress report on this.

37. The Attorney General's Chambers has produced the first draft revising the Extradition Act. It is contemplated that instead of using the 'list system' for extradition crimes as found in the present Act, a 'penalty based' approach will be used. It is also contemplated that the restriction on non-extradition for an offence of political character will also be redefined in accordance with the London Scheme for Extradition within the Commonwealth.

Please indicate whether the Extradition Act 1983 provides for the application of the principle aut dedere aut judicare (Duty to Extradite or Prosecute in International Law) in relation to the offences referred to in sub-paragraph 2(c) of the Resolution 1373 "Deny safe haven to those who finance, plan, support or commit terrorists acts, or provide safe havens"?

38. Generally, the principle is applied provided that it is an extraditable offence and that the countries are designated in the Schedule under the current Extradition Act. However, Brunei Darussalam currently only recognizes certain terrorist acts under specific anti-terrorism conventions which have been given force of law in Brunei Darussalam to be extraditable offences for the purpose of our Extradition Act. These are the Hague Convention for the Suppression of Unlawful Seizure of Aircraft and the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation which has been given force of law under the Hijacking and Protection of Aircraft Order 2000 and the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircrafts which has been given force of law under the Tokyo Convention Order 2000.

Are those offences listed in the Schedule of the Extradition Act 1983?

39. These offences are not listed in the current Extradition Act. However, Brunei Darussalam provides extradition for other offences relating to terrorist acts which include: offence of Harboring Offenders (s.217 of the CPC; offences and certain acts committed on board an aircraft; offences of hijacking and unlawful acts against safety of aircraft; and offences against internationally protected persons.

If the answer to the last question is in the affirmative, please outline the crimes set out in the list.

40. Not applicable.

If the answer is in the negative, please outline of the steps which Brunei Darussalam intends taking in order to comply with this aspect of the Resolution.

41. As stated in paragraph 32, the proposed new Extradition Act will use a penalty-based approach in relation to extraditable offences. The offences referred to in paragraph 2(c) of the Resolution will fall within the category of extraditable offences.

Please outline the legal or other measures which enable the authorities of Brunei Darussalam to provide assistance in matters of criminal investigation and judicial proceedings, as required under sub-paragraph

2(f) of the Resolution 1373 "afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings".

42. Please refer to paragraphs 47 and 48 of the supplementary report of Brunei Darussalam informing of the Public Prosecutor's general power to direct any criminal investigation and judicial proceedings on behalf of foreign law enforcement agencies.

43. Furthermore, under the Extradition Act, the Attorney General may require a magistrate to take evidence for the purposes of any criminal matter pending in any court in any foreign state from any witness who shall be compelled to attend and answer questions and produce documents as deemed necessary.

44. Any request by foreign law enforcement agencies to assist them is currently forwarded to the Attorney General through diplomatic channels or through INTERPOL and ASEANAPOL.

Brunei Darussalam indicates, in its supplementary report, that it may provide assistance in criminal matters to Member States of the Commonwealth. Please outline the legal and administrative provisions which Brunei Darussalam has put in place to enable it to comply with this aspect of the Resolution as regards States which are not members of the Commonwealth.

45. The draft Mutual Assistance in Criminal Matters Order has been finalized and about to be submitted to the legislative authority for enactment.

Please outline the progress report on the ratification by Brunei Darussalam of the remaining instruments relating to terrorism to which Brunei Darussalam has yet to become a party.

46. Brunei Darussalam has ratified the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf on 4 December 2003. The draft Maritime Offences Order to implement the obligations under the Convention and Protocol is in its final drafting stages.

47. The Convention on the Marking of Plastic Explosives for the Purpose of Detection and the Convention on the Physical Protection of Nuclear Material are still under consideration.

Please state the progress report on the implementation in domestic law of the international instruments relating to terrorism which Brunei Darussalam has been ratified. In particular, a list of the penalties prescribed for offences created as required under the Conventions and Protocols.

48. The following Conventions have been incorporated into domestic laws: -

a. The Emergency (Tokyo Convention) Order 2000 gives effect to the provisions of the Tokyo Convention on the Offences and Certain Other Acts Committed on Board Aircrafts 1963. The offences are set out under section 2 of the Act and the corresponding penalties are reflected by the specific offences mentioned in the Penal Code.

b. The Emergency (Hijacking and Protection of Aircraft) Order 2000 gives effect to Hague Convention for the Suppression of Unlawful Seizure of Aircraft 1970. Any person guilty of an offence under this Order shall be liable on conviction to be punished with imprisonment for life.

c. The Internationally Protected Persons Act gives effect to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents 1973. The offences are set out under section 2 of the Act and the corresponding penalties are reflected by the specific offences mentioned in the Penal Code.

d. The Emergency (Hijacking and Protection of Aircraft) Order 2000 gives effect to the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation 1971. Any person guilty of an offence under this Order shall be liable on conviction to be punished with imprisonment for life.

e. The Anti-Terrorism (Financial and Other Measures) Order 2002 gives effect to the International Convention for the Suppression of the Financing of Terrorism. Any person in Brunei Darussalam, and any citizen of Brunei Darussalam outside Brunei Darussalam, who contravenes sections 3, 4, 5, 6, 7 or 8 of this Order is guilty of an offence and liable on conviction to a fine not exceeding $100,000, imprisonment for a term not exceeding five years or both.

49. In relation to the following Conventions and Protocols, Brunei Darussalam's Penal Code also covers the offences provided under these Conventions/Protocols.

a. The International Convention Against the Taking of Hostages;

b. The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation;

c. International Convention for the Suppression of Terrorist Bombings.

Please outline Brunei Darussalam's report/response submitted to other organizations involved in monitoring international standards, as well as details of any efforts to implement international best practice, codes and standards which are relevant to the implementation of Resolution 1373.

50. Brunei Darussalam does not submit any report(s) pertaining to the implementation of Resolution 1373 to any other organizations.

51. In addition, Brunei Darussalam through Association of South East Asian Nations (ASEAN), Asia Pacific Economic Forum (APEC), ASEAN Regional Forum (ARF) and other regional co-operations, have agreed to organize joint projects, programmes, seminars and workshops to assist Brunei Darussalam in establishing international standards of combating terrorism in terms of law enforcement and legal framework.

B. Assistance and Guidance

Please outline the areas, in which assistance or advice might be of benefit to Brunei Darussalam in its implementation of the Resolution or of any areas in which Brunei Darussalam might be in position to offer assistance or advice to other States on the implementation of the Resolution.

52. Brunei Darussalam is interested in capacity-building programmes and technical assistance, as well as specialized training from other states in the following areas:

i. Asset forfeiture and asset tracing of funds related to terrorist activities;

ii. Analysis of suspicious transactions; and

iii. Supervising Alternative Remittance Services (ARS) and ways to tackle the problems posed by ARS.

United Nations S/2005/260

Security Council

Distr.: General
19 April 2005

Original: English

Letter dated 18 April 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 21 November 2003 (S/2003/1125). The Counter-Terrorism Committee has received the attached third report from the Democratic Republic of the Congo submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

05-32129 (E) 180505 030605

Annex

[Original: French]

Letter dated 28 March 2005 from the Permanent Representative of the Democratic Republic of the Congo to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to transmit to you herewith the third report submitted by the Democratic Republic of the Congo pursuant to paragraph 6 of Security Council resolution 1373 (2001) concerning counter-terrorism (see enclosure).

(*Signed*) Atoki **Ileka**
Ambassador
Permanent Representative

Enclosure

[Original: French]

Third report submitted by the Democratic Republic of the Congo to the Committee pursuant to paragraph 6 of resolution 1373 (2001) concerning counter-terrorism

This report follows on from that submitted on 31 March 2003 by the Government of the Democratic Republic of the Congo (DRC) to the Security Council Committee established by resolution 1373 (2001) concerning counter-terrorism and issued as document S/2003/386.

It is submitted in response to the request for further clarification and information made by the Security Council Committee after consideration of the aforementioned report.

The questions raised by the Committee, to which the Government is responding in this supplementary report, relate to paragraphs 1, 2, 3 and 4 of resolution 1373 (2001) and other relevant matters.

Paragraph 1

Please describe the legal and other measures available to comply with the requirements of paragraph 1 of resolution 1373 (2001). Please provide answers in respect of each subparagraph.

Subparagraph (a)

What measures, if any, have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on subparagraphs 1 (b) to 1 (d)?

Since the Democratic Republic of the Congo's signing on 10 November 2001 of the International Convention for the Suppression of the Financing of Terrorism, the process of whose ratification the Ministry of Justice has recently initiated, the Congolese Government has promulgated Act No. 04/016 of 19 July 2004 on combating money-laundering and the financing of terrorism.

This Act marks a significant advance in the efforts of the Democratic Republic of the Congo to combat the financing of terrorism in that it:

- Punishes the financing of terrorism and money-laundering;
- Makes it an offence to provide, collect, bring together or manage funds, securities or goods by any means, either directly or indirectly, with the intention or in the knowledge that they will be used, wholly or in part, to perpetrate a terrorist act, whether or not such an act occurs;
- Also makes it an offence to convert, transfer, handle, conceal, disguise, acquire, hold or use goods;

- Also provides for both protective and punitive measures, namely:
  - freezing of assets;
  - seizure;
  - penalties; and
  - confiscation.

Subparagraph (b)

What are the offences and penalties in your country with respect to the activities listed in this subparagraph?

The acts listed under subparagraph (a) above are defined as offences under the terms of the aforementioned Act No. 04/016 of 19 July 2004. They may incur penalties ranging from 5 to 20 years' imprisonment, together with fines equivalent to between 6 and 12 times the amount of the laundered sum.

Articles 157 to 160 of Act No. 024/2002 of 18 November 2002 on the Military Penal Code defines the following as acts of terrorism:

- Wilful attacks on human life or physical integrity, abduction and confinement of persons and the hijacking of aircraft, ships or any other means of transport;
- Theft, extortion, destruction, degradation and damage;
- Making, possessing, storing, acquiring and transferring lethal or explosive devices and appliances or other toxic biological weapons or weapons of war;
- The fact of introducing into the atmosphere, on or beneath the surface of the ground or in the water of the Republic a substance that may endanger the health of human beings or animals or the natural environment.

In addition, articles 343-345, 355, 359 and 371-400 of the 1966 legislative order on the shipping code specify a number of offences that are defined in terms similar to those applied to acts of terrorism. (The texts of these provisions will be compiled and sent at a later date to the CTC to supplement this report.)

Subparagraph (c)

What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

In addition to the responsibilities of the Public Prosecutor for investigating and punishing offences, the judicial authorities may, on the basis of reports from the Financial Intelligence Unit and the Central Bank, order the freezing of accounts and assets held in banks and financial institutions. The relevant legal provisions will also be reproduced and sent at a later date to the CTC.

Subparagraph (d)

What measures exist to prohibit the activities listed in this subparagraph?

The Act in question sets the threshold for transactions at US$ 10,000 and requires credit institutions to ascertain the identity of their client and the origin of

their funds, failing which they will be subject to fines, permanent or temporary prohibition, permanent or temporary closure and cessation of activity.

The establishment under the aforementioned Act of the Financial Intelligence Unit is a measure to detect and prevent terrorist activity in that the Unit is responsible for collecting and processing financial intelligence concerning channels for money-laundering and the financing of terrorism.

To this end, it is required to:

1. Receive, analyse and process the declarations demanded of the persons and bodies referred to in article 4 of the aforementioned Act;

2. Also receive any other useful information, particularly that communicated by the judicial authorities. The Unit may also, on its request, be notified by any public authority and any physical or legal person referred to in article 4 of information and documents in connection with investigations undertaken following a declaration of suspicion;

3. Carry out periodic studies on the development of new techniques for money-laundering and financing terrorism on the national territory;

4. Advise on the State's policy for combating money-laundering and the financing of terrorism and its implementation and propose appropriate reforms in that regard with a view to more effectively combating money-laundering;

5. Report to the Public Prosecutor.

Paragraph 2

Please describe the legal and other measures available to comply with the requirements of this paragraph.

Subparagraph (a)

What legislation or other measures are in place to give effect to this subparagraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists?

The Congolese Act of 21 February 1950 regulating firearms and ammunition makes it punishable to import, transport, possess, sell or discard firearms and ammunition.

In view of the particular situation that the country is going through, the Congolese Government has undertaken with other countries of the subregion to combat any act that threatens international peace and security.

To this end, the Democratic Republic of the Congo has signed and/or ratified:

- the Nairobi Declaration;
- the tripartite Agreement on border security in the Great Lakes region;
- the Dar es Salaam Declaration on Burundi describing the NLF as a terrorist group;

- the Treaty on the Non-Proliferation of Nuclear Weapons of 12 February 1970;
- the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects;
- the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction of 18 September 1997.

The Democratic Republic of the Congo supports the African Centre for Study and Research on Terrorism in Algiers, established by the African Union, which has been in operation since 13 October 2004.

The Congolese Government, by Order No. 003 of 31 March 2003, set up a Focal Point to coordinate action to combat illicit trafficking in small arms and light weapons. This Focal Point was officially launched on 20 October 2004.

Subparagraph (b)

What other steps are being taken to prevent the commission of terrorist acts, and, in particular, what early warning mechanisms exist to allow exchange of information with other States?

The first response to the need for a domestic early warning mechanism has been to place the Permanent Secretariat of the National Committee for Coordinating Efforts to Counter International Terrorism (CNCLT) at the highest level of government (the Presidency of the Republic).

The elite troops of the Rapid Response Police have been made available in case of an alert.

A Counter-Terrorism Division has been established at the National Intelligence Agency.

Firms suspected of relations with terrorist or pro-terrorist networks are kept under surveillance.

The Democratic Republic of the Congo participated in October 2004 in the African Union High-level Intergovernmental Meeting convened to evaluate the progress achieved and decide on ways and means of preventing and combating terrorism in Africa, in the light of the various instruments relating thereto.

Subparagraph (c)

What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this subparagraph? It would be helpful if States supplied examples of any relevant action taken.

The Congolese Act on the Immigration Police (legislative order No. 83/033 of 12 September 1983) authorizes Immigration Officers to turn back any suspect person at the borders of the Democratic Republic of the Congo. The President of the Republic is likewise bound to expel any person whose behaviour is a threat to public order.

The Act also requires the Congolese authorities to establish a list of undesirable persons so that they may be prevented from gaining access to the country. In addition, a National Immigration Commission has been established to monitor the regular updating of the list of undesirable persons established by the security services.

The Government of the DRC has promulgated Act No. 021/2002 of 16 October 2002 on the Status of Refugees.

This Act establishes a National Commission for Refugees responsible for examining requests for asylum on a case-by-case basis in order to ensure that persons prosecuted for serious criminal offences or implicated in terrorist acts cannot insinuate themselves among the asylum seekers.

In this connection, the DRC signed in February 2005, with the International Criminal Tribunal for Rwanda (ICTR) a cooperation agreement to track down and extradite persons responsible for the Rwandan genocide, designated as terrorists by the Dar es Salaam Declaration.

In the same vein, the DRC has signed judicial cooperation conventions with several countries in the region, in particular the Convention of 31 June 1975 with Burundi and Rwanda and the Convention of 12 April 1978 with the Republic of the Congo.

Subparagraph (d)

What legislation or procedures exist to prevent terrorists acting from your country against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.

The legal arsenal of the DRC on the Immigration Police, the Act on the combating of money-laundering and the financing of terrorism and the establishment by presidential decree of the National Committee for Coordinating Efforts to Counter International Terrorism together with cooperation with Interpol ensure that terrorists on our territory are expelled, extradited or prosecuted and are thus prevented from acting from our country.

Subparagraph (f)

What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.

The steps outlined in subparagraph (b) above and the application of measures for mutual legal assistance and extradition provide an appropriate framework in place for the prevention and suppression of the financing of terrorist acts.

Subparagraph (g)

How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery, etc.?

In addition to obligations under the Act on the Immigration Police and its implementing measures, a Commission for Combating Corruption, Fraud, and the

Smuggling and Forgery of Currency and Brands has been established by Decree No. 116/2002 of 29 August 2002.

In seaports and airports modern equipment has been installed for seeking, detecting and visualizing dangerous objects or materials that may be used for the purposes of terrorism.

Computer hardware has been installed in seaports and airports for the compilation of a database covering persons entering or leaving the territory of the DRC and the public network database is able to be used by international agencies to track down reported persons or networks.

In any case, the joint services coordinated by the CNCLT Focal Point monitor the issuance and receipt of travel documents.

Paragraph 3

The Counter-Terrorism Committee would welcome a report on the progress achieved by the Democratic Republic of the Congo with regard to becoming a party to and ratifying international conventions and protocols relating to terrorism and enacting legislation with a view to implementing these instruments. Please provide a list of countries with which the Democratic Republic of the Congo has concluded bilateral treaties on cooperation and on exchange of information.

I. Instruments ratified

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963;
2. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;
4. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations at New York on 14 December 1973.

II. Instruments signed

1. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations at New York on 17 December 1979;
2. Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done and signed at Montreal on 23 September 1971 and 24 February 1988;
3. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

III. Instruments being ratified or acceded to

1. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 26 October 1979 and opened for signature at Vienna and New York on 3 March 1980;

2. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted at Rome on 10 March 1988;

3. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, concluded at Rome on 10 March 1988;

4. Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1998;

5. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997;

6. United Nations Convention against Organized Transnational Crime and its Protocols, adopted by the General Assembly of the United Nations on 15 November 2000 and 31 May 2001;

7. African Union Convention on the Prevention and Combating of Terrorism of 1999.

Paragraph 4

Has the Democratic Republic of the Congo addressed any of the concerns expressed in paragraph 4 of the resolution?

5. A National Committee to Combat Drugs has been set up.

6. Act No. 04/016 of 19 July 2004 on combating money-laundering and the financing of terrorism has been promulgated.

7. The Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction has been ratified.

8. The Geneva Convention of 10 October 1980 on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects has been ratified.

9. The National Commission for Refugees has been set up.

10. The National Immigration Commission has been established.